

BEFORE THE
DIVISION OF MEDICAL QUALITY ASSURANCE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

No. 02-95-56844

BERT A. LIES, M.D.)
539 Harkle Road, Suite D)
Santa Fe, New Mexico 87501)

OAH No. N-9611139

Physician's and Surgeon's)
Certificate Number G14439)


Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Medical Board of California as its
Decision in the above-entitled matter.

This Decision shall become effective on June 12, 1998.

IT IS SO ORDERED May 13, 1998.



TRA LUBELL, M.D.
President
Division of Medical Quality

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Against:)	No. 02-95-56844
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BERT A. LIES, M.D.)	OAH No. N-9611139
539 Harkle Road, Suite D)	
Santa Fe, New Mexico 87501)	
)	
Physician's and Surgeon's)	
Certificate Number G14439)	
)	
)	
Respondent.)	
)	

PROPOSED DECISION

Stephen J. Smith, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 6, 1998.

Fred A. Slimp II, Deputy Attorney General, Department of Justice, State of California, represented the complainant.

There was no appearance by or on behalf of Bert A. Lies, M.D.

FACTUAL FINDINGS

1. Ronald Joseph, acting in his official capacity as Executive Director, Medical Board of California (hereafter "the Board"), Department of Consumer Affairs, State of California, made the charges and allegations contained in the Accusation and caused it to be filed on July 23, 1996.

Bert A. Lies, Jr., M.D., filed a Notice of Defense pursuant to Government Code section 11506 on October 4, 1996. The matter was set for an evidentiary hearing.

The pending matter was tentatively settled in February 1997. The settlement was not finalized for reasons not apparent in the record. The matter was rescheduled for evidentiary hearing.

2. Bert A. Lies, Jr., M.D., was issued Physician's and Surgeon's Certificate number G 14429 by the Board on March 4, 1968. The Certificate has been continuously renewed and remains in full force and effect. The Certificate expires on April 30, 1999, unless renewed. The Board's official records reflect the instant action is the only disciplinary action of record against Dr. Lies in California during the history of his licensure by the Board.

3. Notice of the date, time and place of the evidentiary hearing on the Accusation was duly given by the Deputy Attorney General on behalf of the Board. Dr. Lies did not appear at the hearing. Good cause was not offered or proved for his failure to appear. The matter was conducted as a default, pursuant to Government Code section 11520.

4. Dr. Lies has held license number 77-62 to practice medicine and surgery, issued by the Board of Medical Examiners (hereafter "the New Mexico Board"), State of New Mexico, for a period not precisely proved but since at least 1995.

5. Dr. Lies was convicted upon his plea of guilty in the United States District Court, District of New Mexico, of the crime of a violation of Title 26, United States Code section 7206(1), filing false income tax statements, a felony. The Court found Dr. Lies had filed false income tax returns for 1989. Dr. Lies was placed on probation for a period of three years, the terms and conditions of which included a fine of \$10,000, home detention for 4 months, and 450 hours of community service, to be coordinated through the New Mexico Board and New Mexico Public Health Resources Program.

6. The New Mexico Board imposed disciplinary action against Dr. Lies' New Mexico license to practice medicine and surgery on August 25, 1995. The disciplinary action was predicated upon Dr. Lies' criminal conviction, as immediately set forth above. The New Mexico Board placed Dr. Lies upon three years probation, with the terms and conditions of that probation the same as those imposed upon him by the U.S. District Court.

7. There was no evidence whether Dr. Lies has successfully completed all or any part of his probation to the U.S. District Court or to the New Mexico Board.

8. The filing of fraudulent income tax returns is an act of dishonesty, and therefore an act involving moral turpitude. Kirby v. Alcoholic Beverage Control Appeals Board

(1969) 270 Cal.App.2d 535. Honesty is a requisite character trait for initial or continued licensure as a physician and surgeon in the State of California. Matanky v. Board of Medical Quality Assurance (1978) 79 Cal.App.3d 293, 305. Acts and omissions involving dishonesty, regardless of the nexus of those acts to the actual practice of medicine, are substantially related to the duties, functions and qualifications of a physician and surgeon in the State of California.

9. Several certifications of costs of prosecution were filed pursuant to the authority of Business and Professions Code section 125.3 in this action. Costs for legal services of Deputy Attorney General Daniel Turner in 1996-97 were certified as 3.5 hours, for a total cost of \$343. Costs for legal services of Deputy Attorney General Mara Faust for 1996-97 were certified to be 5.5 hours, for a total cost of \$539. Costs for Legal Analyst Susan McCrackin for 1996-97 were certified as 16.5 hours, for a total of \$858. Finally, costs for Legal Assistant Clifford Dahl for 1997-98 were certified as 5.5 hours, for a total cost of \$291.50. No costs of investigation were identified or sought. Total costs of prosecution sought to be recovered in this action are \$2031.50.

The costs sought to be recovered are reasonable within the meaning of Business and Professions Code section 125.3. The costs sought for Legal Assistant McCrackin appear somewhat on the high side, considering the nature of the case. However, the case was settled once, and contains a significant legal issue regarding the ability of the Board to discipline a licensee for an act of dishonesty not directly related to the practice of medicine. Further, no costs were sought for the services of the Deputy Attorney General that completed the preparation and actually brought the case to trial, nor were costs sought for investigation, except as performed by the Deputies Attorney Generals and Legal Assistants. Under these circumstances, the costs sought are reasonable.

LEGAL CONCLUSIONS

1. Dr. Lies violated Business and Professions Code section 141 as a result of suffering the imposition of disciplinary action against his license to practice as a physician and surgeon by the State of New Mexico, Board of Medical Examiners, as set forth in the Factual Findings. Dr. Lies sustained a criminal conviction in the United States District Court in July 1995, which resulted in the imposition of disciplinary action against his license by the New Mexico Board in August 1995.

2. Dr. Lies violated Business and Professions Code section 2236, and is therefore guilty of unprofessional conduct within the meaning of that section and Business and Professions Code section 2234(e). Dr. Lies was convicted of a criminal offense in the U.S. District Court of New Mexico for an act involving dishonesty which is substantially related to the qualifications, functions and duties of a physician and surgeon.

"Our courts have long held that the purpose of physician discipline by the Board is not penal but to 'protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity.'" Windham v. Board of Medical Quality Assurance (1980) 104 Cal.App.3d 461, 473, Furnish v. Board of Medical Examiners (1957) 149 Cal.App.2d 326, 331. "For this reason, the board is authorized to discipline physicians who have been convicted of criminal offenses not related to the quality of health care. Physicians convicted of tax fraud, for example, may have their licenses revoked or be placed on probation and required to donate their services to community health agencies." Bryce v. Board of Medical Quality Assurance (1986) 184 Cal.App.3d 1471, 1476, Windham, at p. 473.

In the Windham decision, the Court of Appeal dealt squarely with the issue of whether the conviction of tax fraud, a criminal offense involving acts and omissions not directly related to the quality of health care provided, constituted acts and omissions substantially related to the duties, qualifications and functions of a physician and surgeon.

"Respondent argues that while tax fraud may adversely reflect on his moral character, it is not the type of transgression which reflects on his professional qualifications, functions or duties. We disagree. First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government—state, local and federal—in many ways that have nothing to do with his own personal tax obligation...Quite apart from contacts with various governmental agencies, most practicing physicians deal with various private insurance carriers on a basis which demands utmost honesty in reporting. Above all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity." Windham, at p. 470. The court finished its disposal of the contention by citing Matanky v. Board of Medical Quality Examiners (1978) 79 Cal.App.3d 293, 305, as follows,

"[I]ntentional dishonesty,... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine."

3. Cause exists to impose disciplinary action upon Dr. Lies' California Certificate pursuant to the authority of Business and Professions Code section 2227. Dr. Lies is guilty of unprofessional conduct and violations of the Medical Practice Act, as set forth in Legal Conclusions 1 and 2 above.

4. Business and Professions Code section 125.3 authorizes the Board to recover its costs of prosecution, as long as those costs are certified to have been incurred, and are determined to be reasonable. The costs of \$2031.50 were properly certified and are reasonable. The costs are recoverable in this action.

5. The disciplinary sanction to be imposed in a reciprocal disciplinary action such as this one usually mirrors the discipline imposed by the licensing authority of the state where the licensee primarily lives and practices. However, this assumes the acts or omissions leading to the disciplinary action in the sister jurisdiction led to a disciplinary sanction in that jurisdiction similar to that which the Board would impose for the same acts or omissions, had they occurred in California, absent unusual circumstances. No such circumstances exist here, other than the fact that the minimum probationary period in California exceeds that imposed by the New Mexico Board, and that the New Mexico Board deferred to the criminal court for the terms and conditions of probation. The deferral option is not available in this action, and there is no compelling reason to shorten the minimum probationary period in this case.

A balancing of factors in aggravation, mitigation and rehabilitation in this matter leads to the selection of an appropriate disciplinary sanction. The acts leading to the conviction occurred in 1989. There is no other evidence of any criminality, and Dr. Lies has an otherwise unblemished record of licensure in both California and New Mexico. In the case of his California licensure, that unblemished record covers a 30-year period. There was no evidence the offense involved quality of care issues or substance abuse. There was no evidence of physical, psychological or medical skill and competence impairment. There was no evidence of any violation of either court or New Mexico Board probation. There is no factual basis for the imposition of any of the optional conditions of probation, nor is there a compelling reason to impose any actual suspension. Therefore, the Board's standard terms and conditions of probation are imposed, for the minimum probationary term of five years.

ORDER

Physician's and Surgeon's Certificate No. G 14439, issued to Bert A. Lies, Jr., M.D. is revoked. However, the revocation is stayed and Dr. Lies is placed on probation for a period of five years, upon the following terms and conditions:

1. Within 15 days after the effective date of this decision Dr. Lies shall provide the Division, or its designee, proof of service that he has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to him or where he is employed to practice medicine, and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to him.
2. Dr. Lies shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court-ordered criminal probation, payments and other orders.
3. Dr. Lies shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
4. Dr. Lies shall comply with the Division's probation surveillance program. Dr. Lies shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.


Dr. Lies shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

5. Dr. Lies shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

6. In the event Dr. Lies should leave California to reside or to practice outside the State or for any reason should he stop practicing medicine in California, he shall notify the Division or its designee in writing within ten (10) days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty (30) days in which Dr. Lies is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.
7. Dr. Lies may petition for modification or termination of penalty 1) if the New Mexico Board of Medical Quality terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.
8. Upon successful completion of probation, Dr. Lies' certificate shall be fully restored.
9. If Dr. Lies violates probation in any respect, the Division, after giving him notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against him during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
10. Dr. Lies shall reimburse the Division the amount of \$2031.50 within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by Dr. Lies shall not relieve him of his responsibility to reimburse the Division for its investigative and prosecution costs.

11. Dr. Lies shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Medical Board of California at the end of each fiscal year. Failure to pay such costs shall be considered a violation of probation.
12. Following the effective date of this decision, if Dr. Lies ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate his request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, Dr. Lies will no longer be subject to the terms and conditions of probation.

Dated: April 27, 1998



STEPHEN J. SMITH
Presiding Administrative Law Judge
Office of Administrative Hearings

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of the State of California
JANA L. TUTON
Supervising Deputy Attorney General
DANIEL J. TURNER
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. 02-95-56844
Against:)	
BERT A. LIES, JR., M.D.)	ACCUSATION
539 Harkle Road, Suite D)	
Santa Fe, New Mexico 87501)	
California Physician's and)	
Surgeon's Certificate No. G14439)	
Respondent.)	

The Complainant alleges:

PARTIES

1. Complainant, Ronald Joseph, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about March 4, 1968, Physician's and Surgeon's Certificate No. G14439 was issued to Bert A. Lies, Jr., M.D. Unless renewed, it will expire on April 30, 1997.

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JURISDICTION

3. This accusation is brought before the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

A. Section 2227 of the Code provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate."

C. Section 2236 of the Code provides, in part, that the conviction of any offense substantially

1 related to the qualifications, functions, or duties of
2 a physician and surgeon constitutes unprofessional
3 conduct.

4 D. Section 125.3 of the Code provides, in part, that
5 the Board may request the administrative law judge to direct
6 any licensee found to have committed a violation or
7 violations of the licensing act, to pay the Board a sum not
8 to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 E. Section 118(b) of the Code provides, in part, that
11 the expiration of a license shall not deprive the Board of
12 jurisdiction to proceed with a disciplinary action during
13 the time within which the license may be renewed, restored,
14 or reinstated.

15 F. Section 2428 of the Code provides, in part,
16 that a license which has expired may be renewed any
17 time within five years after expiration.

18 G. Section 141 of the Code provides:

19 "(a) For any licensee holding a license issued by
20 a board under the jurisdiction of the department, a
21 disciplinary action taken by another state, by any
22 agency of the federal government, or by another country
23 for any act substantially related to the practice
24 regulated by the California license, may be a ground
25 for disciplinary action by the respective state
26 licensing board. A certified copy of the record of the
27 disciplinary action taken against the licensee by

1 another state, an agency of the federal government, or
2 another country shall be conclusive evidence of the
3 events related therein.

4 "(b) Nothing in this section shall preclude a
5 board from applying a specific statutory provision in
6 the licensing act administered by that board that
7 provides for discipline based upon a disciplinary
8 action taken against the licensee by another state, an
9 agency of the federal government, or another country."

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Discipline, Restriction, or Limitation Imposed By Another State)

12 4. Respondent Lies is subject to disciplinary action
13 under section 141 of the Business and Professions Code in that on
14 August 25, 1995, the State of New Mexico, Board of Medical
15 Examiners imposed discipline on respondent's license to practice
16 medicine in that state by placing respondent's license on
17 probation for three years following respondent's conviction on
18 April 27, 1995 of filing false income tax statements. Attached
19 as Exhibit A is a true and correct copy of the Decision and Order
20 from the State of New Mexico.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Conviction of a Substantially Related Crime)

23 5. Respondent Lies is subject to disciplinary action
24 under section 2234 of the Business and Professions Code on the
25 grounds of unprofessional conduct as defined in section 2236 of
26 that code in that on April 27, 1995, he was convicted by the
27 court on his plea of guilty to one count of violating 26 United

1 States Code section 7206(1) (filing false income tax statements)
2 in District Court of the United States, District of New Mexico,
3 entitled United States of America v. Bert A. Lies, Jr., case
4 number 94-471.

5 PRAYER

6 **WHEREFORE**, the complainant requests that a hearing be
7 held on the matters herein alleged, and that following the
8 hearing, the Division issue a decision:


9 1. Revoking or suspending Physician's and Surgeon's
10 Certificate Number G14439, heretofore issued to respondent Bert
11 A. Lies, Jr., M.D.;

12 2. Revoking, suspending or denying approval of the
13 respondent's authority to supervise physician's assistants,
14 pursuant to Business and Professions Code section 3527;

15 3. Ordering respondent to pay the Division the actual
16 and reasonable costs of the investigation and enforcement of this
17 case;

18 4. Taking such other and further action as the
19 Division deems necessary and proper.

20 DATED: July 23, 1996.

21 
22 _____
23 RONALD JOSEPH
24 Executive Director
25 Medical Board of California
26 Department of Consumer Affairs
27 State of California

Complainant

03573160-SA96AD0594
(SM 5/6/96)

EXHIBIT A



NEW MEXICO BOARD OF MEDICAL EXAMINERS

491 Old Santa Fe Trail
Second Floor, Lamy Building
Santa Fe New Mexico 87501

Gary E. Johnson
GOVERNOR

17 JAN 96 01 24
CENTRAL PLANT UNIT

95 JAN 17 11:34
Livingston Parsons, Jr., M.D.
PRESIDENT

STATE OF NEW MEXICO

BOARD OF MEDICAL EXAMINERS

January 8, 1996

I, *DOROTHY LANE WELBY*, Executive Secretary of the New Mexico Board of Medical Examiners, as a custodian of this record, certify that it is a copy accurately recorded, maintained and reproduced by this agency in accordance with the procedures attached hereto.

BERT A. LIES, Jr., M.D.
NM LICENSE # 95-009
DECISION AND ORDER

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of the New Mexico Board of Medical Examiners to be affixed, the day and year first above written.

DOROTHY LANE WELBY
Executive Secretary
Records Custodian

SEAL

ADMINISTRATION
(505) 827-5022
(505) 827-7377 FACSIMILE

FINANCIAL
(505) 827-6759

INVESTIGATIONS
(505) 827-7362
(505) 827-8491

LICENSING
(505) 827-0233 APPLICATIONS
(505) 827-7317 PHYSICIAN ASSISTANT
(505) 827-6754 VERIFICATIONS

IN THE MATTER OF
BERT A. LIES JR., M.D.
RESPONDENT

DECISION AND ORDER

WHEREAS, the New Mexico Board of Medical Examiners ("Board") issued a Notice of Contemplated Action ("NCA") against Respondent Bert A. Lies Jr., M.D. (Respondent"); and

WHEREAS, Respondent has had an opportunity to discuss the NCA and his rights under the Uniform Licensing Act with his attorney; and

WHEREAS, Respondent, with the advice of his attorney, waives his right to a hearing and admits the allegations set forth: Paragraph 2 and 3 of the NCA;

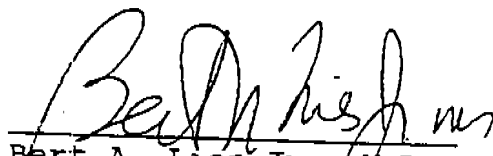
IT IS HEREBY ORDERED that Respondent shall be placed on probation under the following terms and conditions:

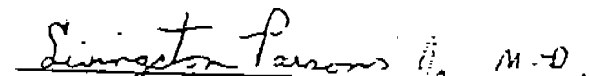
(1) Respondent shall be on probation for 3 years.

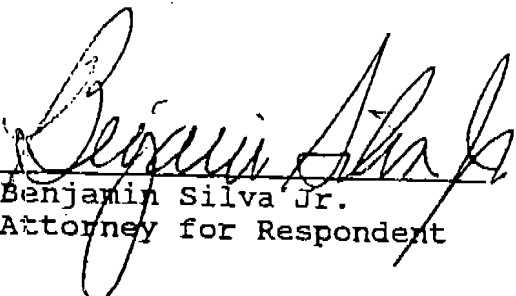
(2) Respondent shall comply with the terms and conditions set forth in the Judgment entered in United States v. Lies, # 94-471-01 JL, a copy of which is attached hereto and incorporated herein by reference.


(3) If the Board receives information that Respondent has breached any of the terms of this Decision and Order, the Board may immediately and summarily suspend his license to practice as a physician in New Mexico. Respondent will thereafter be entitled to a formal hearing in accordance with the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978.

Dated: August 25, 1995


Bert A. Lies Jr., M.D.
Respondent


Livingston Parsons Jr., M.D.
President,
New Mexico Board of
Medical Examiners


Benjamin Silva Jr.
Attorney for Respondent


G.T.S. Khalsa
Administrative Prosecutor